

97630 westemeir terry 112114 rough

11 A I'm there.

12 Q Towards the back of that particular  
13 exhibit, Mr. Westemeir, and there are not page  
14 numbers or Bates numbers, so I'm not entirely  
15 sure how to get you there, but there's some  
16 explanation of your education and your  
17 certifications. Do you see that. It's on two  
18 different pages?

19 A Yes, sir.

20 Q So you graduated with a bachelor's  
21 degree in accounting from the University of  
22 Oklahoma in 1976?

23 A Yes, sir.

24 Q And then a master's in 1977?

25 A Yes, sir.

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1 Q Do you hold a law degree,  
2 Mr. Westemeir?

3 A I do not.

4 Q And let's go through. You have a CPA;  
5 is that right?

6 A Correct.

7 Q And you're accredited -- well, let's go  
8 through these one at a time. Based on your  
9 understanding, what is it that your expertise as  
10 a Certified Public Accountant, what scope of  
11 knowledge would that allow you to offer opinions  
12 on, and if that's a bad question, let me know.

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1 A In that case I might seek a  
2 professional real estate person, a broker, one  
3 that does transactions of this kind, a leasing  
4 agent might be a source or an attorney.

5 Q okay. But there are some instances in  
6 which you think you wouldn't need help because  
7 based on your education and training, you  
8 yourself would be able to come to a conclusion  
9 as to the legal meaning of the terms of the  
10 lease?

11 MR. MILLER: Objection.

12 Mischaracterizes testimony.

13 THE WITNESS: Yeah. Not to the legal,  
14 no.

15 Q (BY MR. AVERY) okay. So if somebody  
16 needed to know the legal meaning of the terms of  
17 a commercial contract, they should not come and  
18 ask you?

19           A    They should not, and I would not give  
20           them a legal opinion.

21 Q Okay. Great. I want to talk about  
22 some of your previous testimony, and I think,  
23 bear with me, because I don't have the tabs that  
24 your attorney has, and maybe I should have. I  
25 know there's an exhibit in here where you've got

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1 some previous testimony.

2 MR. MILLER: off the record.

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48

1 contract?

2 A Objection to form, please.

3 THE WITNESS: Again, not the proper  
4 interpretation as you coined it, but I will give  
5 an interpretation from an accounting based on my  
6 experience and my understanding of the  
7 agreement. I will be, you know, as the  
8 appropriate accounting in my opinion.

9 Q (BY MR. AVERY) So you'll offer  
10 opinions as to what you think the contract  
11 means?

12 A I'll give -- I'll give an opinion that  
13 the accounting was appropriate and in accordance  
14 with my interpretation of the accounting notion  
15 expressed in the agreement.

16 Q And I'm not trying to be coy with you,  
17 but to the extent you'll be offering an opinion  
18 that the accounting was done in a manner  
19 consistent with the contract, as a part of that,  
20 you'll need to tell the jury what you think the  
21 contract required from an accounting standpoint;  
22 is that right?

23 A I will from an accounting standpoint, I  
24 will, based on my experience and my reading of  
25 the contract and how it's been similar language

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49

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1 has been applied to other cases, yes, how I  
2 would apply the accounting here.

3 Q okay. So that's the first broad  
4 category I would say, and, again, I'll go over  
5 them again with you, but the first broad category  
6 would be has there been overbilling? You will  
7 be offering opinions related to that, is that  
8 accurate?

9 A That's correct.

10 Q And the second opinion would be if  
11 there has been an overbilling, what is the  
12 amount of that overbilling? Will you be  
13 offering an opinion about that?

14 MR. MILLER: Excuse me. Please. I'm  
15 sorry. I lost my train of thought writing.  
16 Would it be all right if the reporter read the  
17 question back?

18 MR. AVERY: You bet. Absolutely.

19 THE COURT REPORTER: "And the second  
20 opinion would be if there has been an  
21 overbilling, what is the amount of that  
22 overbilling? Will you be offering an opinion  
23 about that?"

24 MR. MILLER: Thank you. No objection.

25 THE WITNESS: I will not because my --

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1 in this case because I have found that there has

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a process there that Tomahawk completely  
25 complied with and, you know, Mr. Keeney -- like,

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62

1 for example, Mr. Keeney was asked about that  
2 yesterday. He had no idea. All you have to do  
3 is go back to my Exhibit Q, and there is the --  
4 an example of where the invoices were rejected  
5 because of an unknown or unidentified signer on  
6 that and that's the review process they went  
7 through, and then there's an e-mail from  
8 Marjorie Anderson where she communicates on  
9 August 25, 2010, the invoice compliance, what  
10 was required of Tomahawk. So --

11 Q And that's a lot of information.

12 A I understand, but timecards. I mean,  
13 and there's a lot of information that goes into  
14 my opinions. The timecard wasn't the proper  
15 metric.

16 Q Fair to say that a summary of that  
17 first bullet point is that in your opinion  
18 Mr. Keeney started from a flawed premise because  
19 he didn't properly understand the billing  
20 procedures of ZBJ?

21 MR. MILLER: Objection to form.

22 THE WITNESS: Not only the billing  
23 procedures of ZBJ and the requirements of  
24 Chesapeake of how the services were to be  
25 performed according -- back to the master

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63

1 services agreement, how they were to be billed  
2 and how -- what was required before Tomahawk was  
3 paid.

4 Q (BY MR. AVERY) So give me a list of  
5 the processes or requirements that Mr. Keeney  
6 did not understand, both on the ZBJ side and the  
7 Chesapeake side.

8 MR. MILLER: Objection. Calls for  
9 speculation. Form objection. Excuse me.

10 THE WITNESS: Could you repeat the  
11 question?

12 Q (BY MR. AVERY) Yeah. You bet. What I  
13 want to understand is your -- as I understand  
14 this first bullet, you are indicating that  
15 Mr. Keeney in your opinion did not have a proper  
16 understanding of certain processes or procedures  
17 or requirements, both things that ZBJ did  
18 internally, things that Chesapeake required.  
19 Can you give me -- let's start with ZBJ. What  
20 -- if I were to write down here what are the  
21 internal things at ZBJ that in your opinion  
22 Mr. Keeney did not properly understand.

23 A Is how -- the first one is how they  
24 used the timecards at ZBJ.

25 Q How were the timecards used at ZBJ?

97630 westemeir terry 112114 rough

16 maybe for the wrong amount.

17 Q What about if the person who approved  
18 the invoice for Chesapeake didn't know that the  
19 work tickets supporting the invoice misstated  
20 the amount of work done?

21 MR. MILLER: Objection as to form.

22 Q (BY MR. AVERY) Would it be erroneous  
23 for the person to approve that work ticket?

24 MR. MILLER: Objection as to form.

25 THE WITNESS: Would it be -- I'm trying

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105

1 to understand it. Seems like a double negative.  
2 Would he not approve it if he didn't know?

3 Q (BY MR. AVERY) Let me say this.

4 A Okay. I'm trying to understand.  
5 I'm sorry.

6 Q That's good. I want to make sure I get  
7 your testimony and you understand the questions.  
8 If somebody from ZBJ brought a work ticket to  
9 the Chesapeake hand in the field and that work  
10 ticket had an erroneous number of hours, it  
11 misstated the number of hours worked and the  
12 person at Chesapeake nevertheless signed that  
13 work ticket approving it, what's the  
14 significance of that to you?

15 A Well, I would think that the  
16 significance of that from an accounting  
17 standpoint would be that the review process

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18 that's implicated by Chesapeake for that review  
19 did not function properly in that case.

20 Q Okay. And if that happens, do you  
21 think Chesapeake has any recourse against --

22 MR. MILLER: Objection.

23 Q (BY MR. AVERY) -- ZBJ.

24 MR. MILLER: Objection. Calls for a  
25 legal conclusion.

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106

1 Q (BY MR. AVERY) Do you think Chesapeake  
2 has been damaged in that case if they pay the  
3 invoice based on that?

4 MR. MILLER: Objection as to form.  
5 Same objection.

6 THE WITNESS: I don't have an opinion  
7 on that.

8 Q (BY MR. AVERY) Well, do you have an  
9 opinion as to whether or not Chesapeake has been  
10 damaged in this case?

11 A Has Chesapeake been damaged in this  
12 case?

13 Q Yes. Has Chesapeake Operating,  
14 Incorporated, been damaged in this case? Do you  
15 intend to offer an opinion as to whether or not  
16 Chesapeake Operating, Inc., has suffered damages  
17 as a result of the conduct of either ZBJ or  
18 Mr. Amen? Is that an opinion you intend to  
19 offer?

97630 westemeir terry 112114 rough

1 to do that because of weather or whatever. If  
2 it only took him four and a half hours that day  
3 because of some other reason that he didn't have  
4 to wait as long or whatever, but as Jack and  
5 Zach have said, Jack Amen and Zach have said in  
6 their depositions, it was consistency. They put  
7 five hours on that -- on that work ticket every  
8 time for waiting time or whatever for that bill,  
9 and that's what was used to generate the  
10 invoice.

11 Q (BY MR. AVERY) If it took four and a  
12 half hours, and the work ticket says five, no  
13 problem in your opinion?

14 A Because sometimes it took six and a  
15 half. Sometimes it took seven. It was  
16 consistency and fairness that they billed, and  
17 that was what was on the work ticket. That was  
18 what was agreed to by Chesapeake's people in the  
19 field, and it's -- and that's what was billed  
20 that was approved.

21 Q So the approval -- once we sign it, we  
22 have no more recourse?

23 MR. MILLER: Objection as to the  
24 question. Calls for a legal conclusion.  
25 Mischaracterizes the testimony, and I don't know

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6 timecard, there are payroll records and  
7 QuickBooks that we've been able to print out.  
8 So you just don't have to -- the hours are there  
9 that they worked.

10 Q (BY MR. AVERY) So you would just find  
11 another source of their hours?

12 A Right.

13 Q Because ultimately the only way to  
14 verify the work ticket is to look at the hours  
15 from some other source?

16 MR. MILLER: Objection as to form.  
17 calls for speculation.

18 THE WITNESS: Yeah. I don't -- see,  
19 you're wanting to back up on the whole thing and  
20 really those hours were verified.

21 Q (BY MR. AVERY) How?

22 A By the process of getting them approved  
23 at the time of the work being done at -- by  
24 Chesapeake at the well.

25 Q So once we sign it, it's verified?

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1 A They review it.

2 Q So that's a yes? Once we sign it, you  
3 would consider that verified?

4 A They approved it. I won't go to the  
5 definition of verified and quibble with you on  
6 that, but they have approved the invoice.

7 Q Okay. Do you submit hourly or do you